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EX PARTE OR LATE FILED

Sara F. Seidman

Direct Dial Number
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August 28, 1996

EX PARTE

BY HAND

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

AUG 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: PP Docket No. 93-253
Lottery Notice for RSA 727, Ceiba, PR (July 12, 1996)

Dear Mr. Caton:

On behalf of Cellular Communications of Puerto Rico, Inc., I met with Rudy Baca, Legal Advisor to Commissioner Quello, on August 26, 1996, and with Suzanne Toller, Legal Advisor to Commissioner Chong, on August 28, 1996, to discuss the Commission's decision to hold a lottery for certain RSA markets, including RSA 727, Ceiba, Puerto Rico.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, two copies of the written document that was distributed at the meetings is attached for inclusion in the public record in the above-captioned proceeding.

Should you have any questions regarding this matter, please contact me.

Sincerely,



Sara F. Seidman

cc: Rudy Baca
Suzanne Toller
Jackie Chorney
David Siddall
David Furth

2 of 2 Copies rec'd 0+1
LAW OFF

**THE COMMISSION SHOULD AUCTION, RATHER THAN RE-LOTTERY,
CELLULAR LICENSES IN MARKETS WHERE
THE PREVIOUS LOTTERY WINNER WAS DEFECTIVE**

- On July 12, 1996, the Commission announced by public notice that it will hold a "re-lottery" on September 18, 1996, for six RSA markets that heretofore have not been permanently licensed. Cellular Lottery Notice (July 12, 1996) (lottery to held for A block RSAs: Polk, AR; Monroe, FL; Goodhue, MN; Barnes, ND; Bradford, PA; Ceiba, PR).
- These RSAs do not fall within the scope of the Commission's Order mandating lotteries for "*unserved areas*." Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 FCC Rcd 7387 (1994) ("Order").
- The plain language of the Order limits its application to unserved areas (defined as areas that "are generally within the borders of cellular markets"). 9 FCC Rcd at 7388 n.2.
- While it might be true that the typical unserved area is of questionable commercial value, which militates against auctions (Order, 9 FCC Rcd at 7392), the same cannot be said of the typical RSA.
 - In the case of unserved areas, the fact that an area within an RSA or MSA remains unserved demonstrates that providing service to such area probably was not deemed commercially viable by the licensee.
 - In contrast, the RSAs now proposed for lottery have never been available for build-out by a permanent licensee.
 - In many cases, unlicensed RSAs have been considered so valuable that adjacent cellular licensees have built facilities and offered service pursuant to interim operating authority.
- Auctioning these RSAs will not harm existing applicants.
 - The applicants have already *lost* the lotteries for these RSAs and, only by virtue of the disqualification of the winning entity, are they getting a *second* chance.
 - Given the sheer number of applicants (e.g., 491 for Ceiba, PR), no single applicant could have any reasonable expectation of being the lottery winner.

- The Commission recently has proposed to use auctions to issue paging licenses and to issue 220-222 MHz licenses originally slated for lottery.
- The public interest would be served by auctioning the RSA licenses.
 - Given that stand-alone single market cellular systems have become a rarity in the 8 years since the applications were filed, it is unlikely that most of the applicants intend to construct their own facilities and provide service to the public.
 - Operators of adjacent cellular and PCS systems, by contrast, would generally bid on such RSA licenses to round out their service areas.
 - While adjacent licensees would undoubtedly be willing to purchase licenses from a lucky lottery winner, the public interest would be better served if that money was paid to the United States Treasury.

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